

Food or famine – three words will determine our future

Civil society groups fear a new global Convention¹ governing the genes of the major food crops will not be fair, equitable, or comprehensive



PRACTICAL ANSWERS
TO POVERTY

At the FAO in Rome, from 30th October to 13th November, the future of the seeds that provide one of humanity's vital needs – food – is about to be decided, as 180 governments finalise a new environmental convention that should ensure free exchange and open access to these seeds.

But there is worldwide concern that three little words in the text may fatally undermine the security of all our future food supplies by restricting access to seeds and their genetic resources -- and deliver them instead into the private ownership of the multinational biotech industry.

The OECD governments and their seed corporations provisionally inserted three little words – ‘in the form’ – before the word 'received' in a sentence that sets limits to the application of intellectual property rights to seeds and their genes - plant genetic resources for food and agriculture (PGRFA). Why? To allow companies to patent genes and genetic materials, increasingly destined for GM crops, derived from the original seeds collected from farmers' fields.

ITDG expects that this little phrase will make it almost impossible to implement the Convention's aims of ensuring free access to these genetic resources.

Governments may agree to this Convention, intending to keep open access to life-sustaining genetic resources, but in reality, may facilitate their privatisation!

The new seeds Convention will govern the global use of 'plant genetic resources for food and agriculture', including food crops for people and forages for animals. It is supposed to ensure that these genetic resources are conserved, used sustainably, and made accessible to all who need them – farmers, agricultural researchers and the seed industry.

It should also provide a fair deal for the smallholder farmers of developing countries. Their sustainable use of these genetic resources holds the key to future food security and the conservation of agricultural biodiversity.

But after seven years of negotiation, **three decisive issues** remain outstanding:

- Will World Trade Organisation rules dominate the new Convention, putting trade and profit before human and environmental necessities?
- Will enough of the crucial crops and forages be listed, to ensure full food security and farmers' access to these resources?
- Most critically, will governments agree to exempt not only the actual crop seeds themselves, but *all* the genetic resources they contain, from exclusive private ownership through patenting and other forms of intellectual property rights?

Farmers networks, civil society groups and most developing country governments want the 180 governments meeting at the Conference of the UN Food and Agriculture Organisation to:

- remove the phrase "in the form",
- stop the WTO's TRIPs agreement on intellectual property rights from dominating this Convention, and
- place a wider list of crops and forages under the Convention
- increase benefits to farmers

Civil Society groups will judge the new Convention on whether it is fair, equitable and comprehensive. If not, ITDG believes that farmers can wave goodbye to open access and the free exchange of seeds and their Rights and rewards that they have earned over thousands of years of innovation.

¹ *The treaty under negotiation is called the 'International Undertaking on Plant Genetic Resources'. FAO's Legal committee has recommended that, upon its completion, it should be renamed the 'International Convention on PGRFA'.*

Background to the International Undertaking

1. Plant Genetic Resources for Food and Agriculture (PGRFA)

Plant genetic resources for food and agriculture are the basic raw materials for the world's food supply. Overwhelmingly, they originate in developing countries, whose smallholder farmers are the world's principal plant breeders. Over centuries these farmers have produced uncounted varieties of the main crops and forages, adapted for local conditions in the soil, climate, and landscape. The genes in these varieties may hold **precious keys to the future development of the world's food supply**, as the climate changes and the population grows.

There is a global network of publicly funded agricultural research that collects and investigates seeds and genes from farmers' fields, and makes them accessible to farmers and researchers. An estimated 500,000 accessions are held in these international public collections.

These resources are **under threat**. More than 90% of crop and vegetable varieties have been lost from farmers' fields in the past century, with losses increasing at 2% per year².

2. The International Undertaking on Plant Genetic Resources (IU)

Since the Earth Summit in Rio the world has had an international treaty, the Convention on Biological Diversity (CBD), to protect life on earth. Plant genetic resources for food and agriculture are a key part of that biodiversity. The International Undertaking was a voluntary agreement dating back to 1983, but after Rio the world agreed to renegotiate it 'in harmony with the CBD'. The CBD is *legally binding* on governments – and is not subordinate to the World Trade Organisation – and this legal status should transfer to the IU.

A legally binding IU (or International Convention on PGRFA) *should*:

- Protect these resources and encourage their sustainable use
- Keep them in the public domain with access for all who need them
- Ensure farmers' freedom to continue saving, using, exchanging and selling their seeds³
- Provide farmers with a fair share of the benefits from international commercial use

The IU will set up a multilateral system to share those resources placed on an agreed list of crops and forages, and to share benefits, from their commercial use, with developing countries and their farmers.

3. Patenting and other intellectual property rights (IPRs)

IPRs confer private ownership, allowing companies a period of monopoly (usually 20 years) to commercialise and make profit on their discoveries. This legally deprives other parties of free use of the resources. The strongest form of IPR is the patent. Globally, the most important rules on patents are in the World Trade Organisation's agreement on trade-related aspects of intellectual property rights (TRIPs), which is widely seen as unfair and in need of review.

Supporters of the IU -- negotiators from both developing and industrialized countries, FAO experts and civil society groups -- believe PGRFA should be entirely exempted from patents. These resources are precious to the future of mankind and should be in the public domain. But the US has always opposed the IU having power to restrict patenting. It has repeatedly tried to crash or stall the talks, and persuaded the global seed industry association, ASSINSEL, to withdraw its support for the then current text of the IU -- in part, because the three little words 'in the form' were still disputed.

² FAO, 1996; Rural Advancement Foundation International (RAFI), 1997

³ Embodied in Farmers' Rights

Three decisive issues

1. Three little words – Article 13.3 (d)

Article 13 deals with access to the PGRFA listed in the multilateral system. In the current text paragraph 3(d) states:

“Recipients shall not claim any intellectual property or other rights that limit facilitated access to the plant genetic resources for food and agriculture, **[or their genetic parts or components,] [in the form]** received from the Multilateral System;”

The two bracketed phrases are to be agreed at the FAO Conference.

Civil society groups and many developing country governments want the first phrase included and the second deleted. This would ensure that:

- the IU as a whole is dealing not just with seeds but with their genetic components, and
- it includes all such components under the new IPR free system without exemption

The US and its allies want the first phrase deleted and the second retained. If patents are only excluded from genetic resources *‘in the form received’* from the system, that could mean any secondary research, analysis or derivation is not covered. In short, it means the original seed cannot be patented – but any gene, genetic material or genetic process derived from it *could* be patented.

To IU supporters this is a nonsense. Whole seeds cannot be patented *in any case* – they are ‘unimproved’ and there is no ‘inventive step’. The key is what happens to the genes and genetic material. If companies continue to patent these or otherwise subject them to IPRs, they can still legally restrict farmers’, breeders’ and researchers’ use of the whole seed, claiming breach of IPRs. Percy Schmeiser, a Canadian farmer sued by Monsanto after their patented seeds unwittingly grew on his land, is a case in point.

If the phrase ‘in the form’ remains in the text it makes a mockery of the treaty’s aims to keep open access to life-sustaining genetic resources. Governments may agree to these aims but, in reality, they will be facilitating the privatisation of the genetic resources

This text is unlikely to be re-opened at the FAO Conference. Governments will need to decide for or against. Civil society groups are arguing for rejection of the text in the second bracket. The EU, which has a decisive influence as ‘honest broker’ between developing countries and the US, should vote this way. But it is likely to accept both sets of brackets, creating further confusion and leaving that to the Governing Body of the new Convention to sort out.

It therefore seems likely that a government (the US) which has in any case declared it will not sign the IU, and the plant breeding industry that has already declared it is against the text, will succeed in undermining the effectiveness of the Convention.

The position of African countries on this issue is very clear, as evidenced by their submission to the WTO Ministerial meeting in Qatar urging changes in the WTO rules so “...that patenting of life forms would be prohibited...”.

2. Which rules? WTO or CBD?

In 1993 governments meeting in the wake of the Rio Summit asked for the IU to be renegotiated ‘in harmony with the CBD’. They renewed this call at the last CBD meeting in May 2000, heavily lobbied by ITDG, farmers and other civil society groups. Here, the EU can play the decisive role in ensuring that this treaty – like the Biosafety Protocol – forms part of the legally binding system of environmental governance, *not* subordinate to the global trade rules of the WTO.

3. Expanding the list of crops and forages

The undermining of the treaty’s intent by the US and the seed industry has left other governments unsure of the future arrangements for access to, and benefit sharing from, these genetic resources. Some developing country governments, especially Brazil, have therefore withheld their key crops and forages from the multilateral list of crops covered. Rather than deal through a flawed treaty, they hope to get more commercial benefit from making bilateral trade deals – a future of ‘Wild West wheeling and dealing’.

As a result the list currently covers only 35 food crop genera of the hundreds of importance to food security⁴, and a miserable 29 of the 18,000 forages of value to food and agriculture. Peanuts, soybeans, tomatoes, peppers, onions and sugar cane are among the obvious omissions. Negotiators believe that if the individual countries vetoing each of these began to drop their vetoes, there would be a cascade of new inclusions. Confidence is required – confidence in a meaningful treaty.

The EU should combine its current tough stance, that it will not sign the treaty unless there is a meaningful list, with generous offers to these countries. But it must also address the other decisive issues in order to convince those countries that the system will be fair and equitable.

The likely outcome – continuing conflict

Over 400 civil society groups from 70 countries have lobbied the negotiators of this agreement. These groups want a treaty to be agreed now, as the last chance to provide global governance in this area, whatever its shortcomings. But we reserve the right to criticize any agreement which is not fair, equitable and comprehensive, and to continue the fight for just governance through subsequent meetings of the FAO, CBD and other relevant bodies.

For further information

Contact ITDG Press Office lucjaw@itdg.org.uk, ITDG, Schumacher Centre, Bourton, RUGBY, CV23 9QZ, UK

ITDG: http://www.itdg.org/html/whats_new/plant_genetic_resources_a.htm

UKabc for Civil Society news and background on the IU: www.ukabc.org

Rural Advancement Foundation International (RAFI): www.rafi.org

Genetic Resources Action International (GRAIN): www.grain.org

Food and Agriculture Organisation of the UN (FAO): <http://www.fao.org/ag/cgrfa/IU.htm>

Notes for Editors

ITDG and the International Undertaking

ITDG is an international NGO which specialises in working with poor communities to increase technological capacity. Its grassroots agricultural work in three continents builds the capacity of poor women and men to use sustainable technologies for food production and environmental management, and underpins its advocacy on agricultural and environmental issues.

ITDG's research with smallholder farmers highlights their view of agricultural biodiversity, how they sustainably manage PGRFA, and what measures they require to provide the incentives and support they need in order to continue doing so on behalf of humanity. In our view, an effective IU is essential to the global governance of these resources, to safeguard livelihoods, improve food production, implement Farmers' Rights and reward farmers for on-farm conservation of agricultural biodiversity.

ITDG and its partners lobbied the fifth conference of the CBD successfully to issue a new call for speedy conclusion of the IU, and has since played a leading role in the coalition of civil society groups worldwide which want a fair, equitable and comprehensive IU to be achieved.

⁴ of the more than 500 genera of crops collected in the early 20th century by the Russian scientist Vavilov - the father of crop genetic resource conservation